IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 2646 OF 2004
In
SPECIAL CIVIL APPLICATION NO. 8422 OF 1999
With
CIVIL APPLICATION NO.761 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

H. S. PATEL & 26 - Appellant(s)

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION & ANR. – Respondent(s)

==========

Appearance :
MR. R.V. DESAI for Appellants.
MR. M.B. GANDHI for Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 04/08/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard the learned Counsel for the parties.

2. It appears that the present appellants filed an application under Section-33(C)(2) of the Industrial Disputes Act, 1947 for recovery of certain amount on the foundation that though they were addressed as `work-charge' employees, but, in fact, they were required to work as `Pump Operators' and as they were discharging particular duties, they were entitled to particular payment on the principle of `equal work equal pay'. The application was opposed by the employer, but, after recording the evidence, the Labour Court recorded a finding of fact that the appellants before this Court though were termed as `work-charge' employees, but, in fact, were asked to work as `Pump Operators' and in view of the said fact, they were entitled to particular emoluments. The Establishment viz. Gujarat Industrial Development Corporation, being aggrieved by the legality of the Order dated 30th April, 1999 passed by the Labour Court, Ahmedabad, in Recovery Application No.960 of 1987, filed Special Civil Application No.8422 of 1999. The learned single Judge allowed the Writ Application on the ground that the application was not for enforcement of a preexisting right, it quashed the order passed by the Labour Court. Being dissatisfied with the said judgement, the workmen are before this Court.

3. Mr.Desai, learned Counsel for the appellants, raised number of questions, including the question that no useful purpose would be served by asking the appellants to go to the Labour Court in a duly constituted reference because on the basis of the admitted facts, the appellants are entitled to particular benefits. His submission is that in a given case where the equities are in favour of a particular party, the High Court must refuse to interfere in the matter.

4. The appeal is opposed by the other side.

5. The application under Section-33(C)(2) of the Industrial Disputes Act, 1947 is maintainable for enforcing a preexisting right or the right flowing from a preexisting right. When a right, which is considered to be just and fair, then, on the basis of such a right, the application under Section-33(C)(2) of the Act cannot be allowed. The Supreme Court, in the matter of ***State Bank of India vs. Ram Chandra Dubey*** [***AIR 2000 SC 3734***], in paragraph-8 of the judgement, has very categorically carved out the distinction between the two situations.

6. So far as the findings recorded by the Labour Court are concerned, the same cannot be taken to be final or binding or legal because those are the findings recorded by a Court, which

was *coram non-judice*.

7. In our considered opinion, the learned single Judge was absolutely justified in dislodging the order passed by the Labour Court. The appellants are certainly free to take recourse to law. The appeal is accordingly dismissed. Notice is discharged.

Taking into consideration that the matter is pending consideration since 1987, we hereby observe that if within a period of two months, the appellants' make an application to the appropriate Government for making a reference, then, the appropriate Government shall make necessary orders on the application within a period of two months next, to avoid unnecessary delay.

8. In view of the final disposal of the appeal, Civil Application No.761 of 2005 stands disposed of. Rule is discharged.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.]***

*kamlesh**